

109TH CONGRESS
1ST SESSION

S. 266

To stop taxpayer funded Government propaganda.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2005

Mr. LAUTENBERG (for himself, Mr. KENNEDY, Mr. DURBIN, Mr. CORZINE, Mrs. CLINTON, Mr. DORGAN, Mrs. MURRAY, Mr. JOHNSON, Mr. REED, Mr. LIEBERMAN, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To stop taxpayer funded Government propaganda.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop Government
5 Propaganda Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Since 1951, the following prohibition on the
9 use of appropriated funds for propaganda purposes
10 has been enacted annually: “No part of any appro-
11 priation contained in this or any other Act shall be

1 used for publicity or propaganda purposes within the
2 United States not heretofore authorized by Con-
3 gress.”.

4 (2) On May 19, 2004, the Government Ac-
5 countability Office (GAO) ruled that the Department
6 of Health and Human Services violated the publicity
7 and propaganda prohibitions by creating fake tele-
8 vision new stories for distribution to broadcast sta-
9 tions across the country.

10 (3) On January 4, 2005, the GAO ruled that
11 the Office of National drug Control Policy violated
12 the publicity and propaganda prohibitions by distrib-
13 uting fake television news stories to broadcast sta-
14 tions from 2002 to 2004.

15 (4) In 2003, the Department of Education vio-
16 lated publicity and propaganda prohibitions by using
17 of taxpayer funds to create fake television news sto-
18 ries promoting the “No Child Left Behind” program
19 violated the propaganda prohibition.

20 (5) An analysis of individual journalists, paid
21 for by the Department of Education in 2003, which
22 ranked reporters on how positive their articles por-
23 trayed the Administration and the Republican Party,
24 constituted a gross violation of the law prohibiting

1 propaganda and the use of taxpayer funds for par-
2 tisan purposes.

3 (6) The payment of taxpayer funds to journalist
4 Armstrong Williams in 2003 to promote Administra-
5 tion education policies violated the ban on covert
6 propaganda.

7 (7) The payment of taxpayer funds to journalist
8 Maggie Gallagher in 2002 to promote Administra-
9 tion welfare and family policies violated the ban on
10 covert propaganda.

11 (8) Payment for and construction of 8 little red
12 schoolhouse facades at the entranceways to the De-
13 partment of Education headquarters in Washington,
14 DC to boost the image of the “No Child Left Be-
15 hind” program was an inappropriate use of taxpayer
16 dollars.

17 (9) Messages inserted into Social Security Ad-
18 ministration materials in 2004 and 2005 intended to
19 further grassroots lobbying efforts in favor of Presi-
20 dent Bush’s Social Security privatization plan is an
21 inappropriate use of taxpayer funds.

22 (10) The Department of Health and Human
23 Services ignored the Government Accountability Of-
24 fice’s legal decision of May 19, 2004, and failed to
25 follow the GAO’s directive to report its Anti-Defi-

1 ciency Act violation to Congress and the President,
2 as provided by section 1351 of title 31, United
3 States Code.

4 (11) Despite numerous violations of the propa-
5 ganda law, the Department of Justice has not acted
6 to enforce the law or follow the requirements of the
7 Anti-Deficiency Act.

8 (12) In order to protect taxpayer funds, strong-
9 er measures must be enacted into law to require ac-
10 tual enforcement of the ban on the use of taxpayer
11 funds for propaganda purposes.

12 **SEC. 3. DEFINITION.**

13 In this Act, the term “publicity” or “propaganda”
14 includes—

15 (1) a news release or other publication that
16 does not clearly identify the Government agency di-
17 rectly or indirectly (through a contractor) financially
18 responsible for the message;

19 (2) any audio or visual presentation that does
20 not continuously and clearly identify the Government
21 agency directly or indirectly financially responsible
22 for the message;

23 (3) an Internet message that does not continu-
24 ously and clearly identify the Government agency di-

1 rectly or indirectly financially responsible for the
2 message;

3 (4) any attempt to manipulate the news media
4 by payment to any journalist, reporter, columnist,
5 commentator, editor, or news organization;

6 (5) any message designed to aid a political
7 party or candidate;

8 (6) any message with the purpose of self-ag-
9 grandizement or puffery of the Administration,
10 agency, Executive branch programs or policies, or
11 pending congressional legislation;

12 (7) a message of a nature tending to emphasize
13 the importance of the agency or its activities;

14 (8) a message that is so misleading or inac-
15 curate that it constitutes propaganda; and

16 (9) the preparation, distribution, or use of any
17 kit, pamphlet, booklet, publication, radio, television,
18 or video presentation designed to support or defeat
19 legislation pending before Congress or any State leg-
20 islature, except in presentation to Congress or any
21 State legislature itself.

22 **SEC. 4. PROHIBITION ON PUBLICITY OR PROPAGANDA AND**
23 **ENFORCEMENT.**

24 (a) IN GENERAL.—The senior official of an Executive
25 branch agency who authorizes or directs funds appro-

1 priated to such Executive branch agency for publicity or
 2 propaganda purposes within the United States, unless au-
 3 thorized by law, is liable to the United States Government
 4 for a civil penalty of not less than \$5,000 and not more
 5 than \$10,000, plus 3 times the amount of funds appro-
 6 priated.

7 (b) RESPONSIBILITIES OF THE ATTORNEY GEN-
 8 ERAL.—The Attorney General diligently shall investigate
 9 a violation of subsection (a). If the Attorney General finds
 10 that a person has violated or is violating subsection (a),
 11 the Attorney General may bring a civil action under this
 12 section against the person.

13 (c) ACTIONS BY PRIVATE PERSONS.—

14 (1) IN GENERAL.—A person may bring a civil
 15 action for a violation of subsection (a) for the person
 16 and for the United States Government. The action
 17 shall be brought in the name of the Government.
 18 The action may be dismissed only if the court and
 19 the Attorney General give written consent to the dis-
 20 missal and their reasons for consenting.

21 (2) NOTICE.—A copy of the complaint and
 22 written disclosure of substantially all material evi-
 23 dence and information the person possesses shall be
 24 served on the Government pursuant to Rule 4(d)(4)
 25 of the Federal Rules of Civil Procedure. The com-

1 plaint shall be filed in camera, shall remain under
 2 seal for at least 60 days, and shall not be served on
 3 the defendant until the court so orders. The Govern-
 4 ment may elect to intervene and proceed with the ac-
 5 tion within 60 days after it receives both the com-
 6 plaint and the material evidence and information.

7 (3) DELAY OF NOTICE.—The Government may,
 8 for good cause shown, move the court for extensions
 9 of the time during which the complaint remains
 10 under seal under paragraph (2). Any such motions
 11 may be supported by affidavits or other submissions
 12 in camera. The defendant shall not be required to
 13 respond to any complaint filed under this section
 14 until 20 days after the complaint is unsealed and
 15 served upon the defendant pursuant to Rule 4 of the
 16 Federal Rules of Civil Procedure.

17 (4) GOVERNMENT ACTION.—Before the expira-
 18 tion of the 60-day period or any extensions obtained
 19 under paragraph (3), the Government shall—

20 (A) proceed with the action, in which case
 21 the action shall be conducted by the Govern-
 22 ment; or

23 (B) notify the court that it declines to take
 24 over the action, in which case the person bring-

1 ing the action shall have the right to conduct
2 the action.

3 (5) LIMITED INTERVENTION.—When a person
4 brings an action under this subsection, no person
5 other than the Government may intervene or bring
6 a related action based on the facts underlying the
7 pending action.

8 (d) RIGHTS OF THE PARTIES.—

9 (1) GOVERNMENT ACTION.—If the Government
10 proceeds with the action, it shall have the primary
11 responsibility for prosecuting the action, and shall
12 not be bound by an act of the person bringing the
13 action. Such person shall have the right to continue
14 as a party to the action, subject to the limitations
15 set forth in paragraph (2).

16 (2) LIMITATIONS.—

17 (A) DISMISSAL.—The Government may
18 dismiss the action notwithstanding the objec-
19 tions of the person initiating the action if the
20 person has been notified by the Government of
21 the filing of the motion and the court has pro-
22 vided the person with an opportunity for a
23 hearing on the motion.

24 (B) SETTLEMENT.—The Government may
25 settle the action with the defendant notwith-

standing the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) PROCEEDINGS.—Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government’s prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person’s participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person’s cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) LIMIT PARTICIPATION.—Upon a showing by the defendant that unrestricted partici-

1 pation during the course of the litigation by the
2 person initiating the action would be for pur-
3 poses of harassment or would cause the defend-
4 ant undue burden or unnecessary expense, the
5 court may limit the participation by the person
6 in the litigation.

7 (3) ACTION BY PERSON.—If the Government
8 elects not to proceed with the action, the person who
9 initiated the action shall have the right to conduct
10 the action. If the Government so requests, it shall be
11 served with copies of all pleadings filed in the action
12 and shall be supplied with copies of all deposition
13 transcripts (at the Government's expense). When a
14 person proceeds with the action, the court, without
15 limiting the status and rights of the person initiating
16 the action, may nevertheless permit the Government
17 to intervene at a later date upon a showing of good
18 cause.

19 (4) INTERFERENCE.—Whether or not the Gov-
20 ernment proceeds with the action, upon a showing
21 by the Government that certain actions of discovery
22 by the person initiating the action would interfere
23 with the Government's investigation or prosecution
24 of a criminal or civil matter arising out of the same
25 facts, the court may stay such discovery for a period

1 of not more than 60 days. Such a showing shall be
2 conducted in camera. The court may extend the 60-
3 day period upon a further showing in camera that
4 the Government has pursued the criminal or civil in-
5 vestigation or proceedings with reasonable diligence
6 and any proposed discovery in the civil action will
7 interfere with the ongoing criminal or civil investiga-
8 tion or proceedings.

9 (5) GOVERNMENT ACTION.—Notwithstanding
10 subsection (b), the Government may elect to pursue
11 its claim through any alternate remedy available to
12 the Government, including any administrative pro-
13 ceeding to determine a civil money penalty. If any
14 such alternate remedy is pursued in another pro-
15 ceeding, the person initiating the action shall have
16 the same rights in such proceeding as such person
17 would have had if the action had continued under
18 this section. Any finding of fact or conclusion of law
19 made in such other proceeding that has become final
20 shall be conclusive on all parties to an action under
21 this section. For purposes of the preceding sentence,
22 a finding or conclusion is final if it has been finally
23 determined on appeal to the appropriate court of the
24 United States, if all time for filing such an appeal
25 with respect to the finding or conclusion has expired,

1 or if the finding or conclusion is not subject to judi-
2 cial review.

3 (e) AWARD TO PRIVATE PLAINTIFF.—

4 (1) GOVERNMENT ACTION.—If the Government
5 proceeds with an action brought by a person under
6 subsection (c), such person shall, subject to the sec-
7 ond sentence of this paragraph, receive at least 15
8 percent but not more than 25 percent of the pro-
9 ceeds of the action or settlement of the claim, de-
10 pending upon the extent to which the person sub-
11 stantially contributed to the prosecution of the ac-
12 tion.

13 (2) NO GOVERNMENT ACTION.—If the Govern-
14 ment does not proceed with an action under this sec-
15 tion, the person bringing the action or settling the
16 claim shall receive an amount which the court de-
17 cides is reasonable for collecting the civil penalty and
18 damages. The amount shall be not less than 25 per-
19 cent and not more than 30 percent of the proceeds
20 of the action or settlement and shall be paid out of
21 such proceeds. Such person shall also receive an
22 amount for reasonable expenses which the court
23 finds to have been necessarily incurred, plus reason-
24 able attorneys' fees and costs. All such expenses,

1 fees, and costs shall be awarded against the defend-
2 ant.

3 (3) FRIVOLOUS CLAIM.—If the Government
4 does not proceed with the action and the person
5 bringing the action conducts the action, the court
6 may award to the defendant its reasonable attor-
7 neys' fees and expenses if the defendant prevails in
8 the action and the court finds that the claim of the
9 person bringing the action was clearly frivolous,
10 clearly vexatious, or brought primarily for purposes
11 of harassment.

12 (f) GOVERNMENT NOT LIABLE FOR CERTAIN EX-
13 PENSES.—The Government is not liable for expenses
14 which a person incurs in bringing an action under this
15 section.

16 (g) FEES AND EXPENSES TO PREVAILING DEFEND-
17 ANT.—In civil actions brought under this section by the
18 United States, the provisions of section 2412(d) of title
19 28 shall apply.

20 (h) WHISTLEBLOWER PROTECTION.—

21 (1) IN GENERAL.—Any employee who is dis-
22 charged, demoted, suspended, threatened, harassed,
23 or in any other manner discriminated against in the
24 terms and conditions of employment by his or her
25 employer because of lawful acts done by the em-

1 ployee on behalf of the employee or others in fur-
2 therance of an action under this section, including
3 investigation for, initiation of, testimony for, or as-
4 sistance in an action filed or to be filed under this
5 section, shall be entitled to all relief necessary to
6 make the employee whole.

7 (2) RELIEF.—Relief under this subsection shall
8 include reinstatement with the same seniority status
9 such employee would have had but for the discrimi-
10 nation, 2 times the amount of back pay, interest on
11 the back pay, and compensation for any special dam-
12 ages sustained as a result of the discrimination, in-
13 cluding litigation costs and reasonable attorneys’
14 fees. An employee may bring an action in the appro-
15 priate district court of the United States for the re-
16 lief provided in this subsection.

17 **SEC. 5. JUDICIAL NOTICE.**

18 The courts of the United States shall take cognizance
19 and notice of any legal decision of the Government Ac-
20 countability Office interpreting the application of this Act.

21 **SEC. 6. POINT OF ORDER.**

22 (a) IN GENERAL.—

23 (1) REDUCTION OF SALARY.—It shall not be in
24 order in the House of Representatives or the Senate
25 to consider a bill, amendment, or resolution pro-

1 viding an appropriation for an agency that the Gov-
 2 ernment Accountability Office has found in violation
 3 of this Act unless the appropriations for salary and
 4 expenses for the head of the relevant agency con-
 5 tains a provision reducing the salary of the head by
 6 an amount equal to the illegal expenditure identified
 7 by the Government Accountability Office. If the ille-
 8 gal expenditure exceeds the annual salary of the
 9 agency head, then the point of order shall continue
 10 until the remaining amount is subtracted from the
 11 salary of the agency head.

12 (2) COMPLIANCE.—Paragraph (1) shall not
 13 apply if the agency is complying with the decision of
 14 the Government Accountability Office.

15 (b) SUPERMAJORITY WAIVER AND APPEAL.—This
 16 section may be waived or suspended in the Senate only
 17 by an affirmative vote of $\frac{3}{5}$ of the Members, duly chosen
 18 and sworn. An affirmative vote of $\frac{3}{5}$ of the Members of
 19 the Senate, duly chosen and sworn, shall be required in
 20 the Senate to sustain an appeal of the ruling of the Chair
 21 on a point of order raised under this section.

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